

In The Matter Of:)
)
Creation Of A) FCC Docket No. RM-11287
Low Power AM Radio Service)

Page

Introduction and Identification of Parties
1

New Proposal For A Broadcast Experience “Bonus Point”
1

Previous Proposal For A New Programming “Bonus Point”
3

Severability of “Bonus Point” Proposals
7

Our Embrace Of Conscious Silence On Certain Issues
8

Conclusion
9

UNITED STATES OF AMERICA
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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SUPPLEMENTAL WRITTEN COMMENTS OF
THE AMHERST ALLIANCE,
THE MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN (MMWC),
THE LPAM NETWORK,
DON SCHELLHARDT, ESQUIRE
AND
NICKOLAUS E. LEGGETT N3NL

THE AMHERST ALLIANCE of Michigan, THE MICHIGAN MUSIC IS WORLD CLASS! CAMPAIGN (MMWC), THE LPAM NETWORK of New York State, Don Schellhardt, Esquire of Virginia and Nickolaus E. Leggett N3NL of Virginia the 5 signatories of the August 19, 2005 Petition For Rulemaking to establish a new Low Power AM (LPAM) Radio Service.

Our LPAM Petition is the subject of public comments in Docket RM-11287.

New Proposal For A
Broadcasting Experience “Bonus Point”

At present, our Petition proposes a “bonus point”, in the case of mutually exclusive LPAM license applications, for applicants who propose to bring new (but financially sustainable) programming content to their proposed service area.

We stand by this proposal. However, we had *intended* to include in our proposal a *second* “bonus point” for 1 year or more of *documented* broadcasting experience, including (but not limited to) documented experience with Part 15 AM operations.

-2-

Permit us to explain this omission.

As we have told the Commission in the text of our LPAM Petition, the 5 Petitioners agreed within a few days on 15 different recommendations in the Petition. However, we then spent 3 weeks in ultimately fruitless discussion and debate over wattage ceilings and channel spacing requirements. The ultimate result was the presentation of 2 different Alternatives to these subjects in the Appendix of the Petition. One Alternative (for uniform LPAM power ceilings of 100 watts, even in urban areas) was proposed by THE LPAM NETWORK, while the other Alternative (for variations from a national norm of 100 watts in the case of “Urban Frontier Areas” and “Rural Frontier Areas”) was backed by the remaining 4 Petitioners.

In the midst of these turbulent disagreements over whether 100 watts should be required by the Commission in absolutely every case, the 5 Petitioners simply forgot to include in the Petition their proposal for a second “bonus point” for competing LPAM applicants who can document 1 year or more of broadcasting experience.

We deeply regret our omission of this proposal for a second “bonus point” -- and we apologize to the Commission for our error.

Having said this, we urge the Commission to include this second “bonus point” within the text of its coming proposed rule for a new LPAM Radio Service.

The current Low Power FM Radio Service currently awards a “bonus point” for documented “*community service*” experience, even if none of it is On Air. In the spirit of rational complementarity, which includes AM Band opportunities for individual or organizational upward mobility, the *LPAM* Radio Service should reward *On Air* experience, whether or not it involved “community service”.

-3-

**Our Previous Proposal For A
New Programming “Bonus Point”**

A few supporters of a new Low Power AM Radio Service have expressed to us, privately, their concern that the proposed bonus point for “new (but financially sustainable) programming content” might impermissibly draw the Commission into regulation of matters protected by the First Amendment.

This is *certainly* not our intent!!

We do not ask the FCC to move beyond the degree of review that it once *routinely* conducted when approving radio station licenses, and renewing them, under a “public interest” standard.

Since we understand that it was politicians, rather than judges, who brought the application of a “public interest” standard to a halt, the practice has presumably passed Constitutional muster in the eyes of reviewing courts. Judging by the vast majority of the 83,000 Written Comments received in the Commission’s “Broadcast Localism” Docket (formerly Docket RM-10803, but now Docket 04-233), many, many, many radio listeners wish that a “public interest” standard were still being applied to the allocation and renewal of licenses for full power stations.

In any event:

Perhaps we should have used the phrase “programming *format*” in our proposal, instead of “programming content”. We are not envisioning a review by the Commission, either prospectively or retroactively, of individual programs broadcast On Air by a station in the LPAM Radio Service. We are envisioning instead a Commission consideration of *the kind of audiences a competing LPAM applicant is proposing to serve*.

To use the example we cited in our Petition, we said that newcomers from Boston, proposing to establish a light jazz station in Roanoke, should receive priority over an applicant who plans to establish yet another evangelical Christian station in the area. The “bonus point”, we asserted, should go to the light jazz applicant *even if* the

evangelical applicant is a church with roots in the community that go back 150 years.

Light jazz in the Roanoke Valley is an excellent example of “new (but financially sustainable) programming content” (or programming format).

We know light jazz programming is “new” because there are no light jazz stations broadcasting in the Roanoke Valley right now.

We know there is likely to be a “niche market” for light jazz in the Roanoke Valley -- giving the station a chance to be “financially sustainable”, at least if it uses its small size to keep its operating costs low -- because light jazz stations have a record of success in other metropolitan areas (although those areas are larger than Roanoke).

Also:

We know the demographics for light jazz fans. When compared to Americans in general, they are more likely to be highly educated and/or employed as “white collar” professionals. Because the Roanoke Valley contains both colleges and a significant (though not huge) number of “white collar” professionals, there is likely to be a *small but definite market* for light jazz in the area. The market is probably too small to be served by a full power radio station, with its relatively high capital and operating costs -- but light jazz could be a profitable “niche market” for a much smaller station that has much smaller bills to pay.

Don Schellhardt, one of the 5 LPAM Petitioners and the primary author of both the Petition itself and these Supplemental Written Comments, currently lives in the Roanoke Valley. He is a graduate student at Hollins University, pursuing a Master of Arts in Liberal Studies (MALS) degree.

As a light jazz fan, Don is also an example of a radio listener who is *under-served by modern commercial radio*.

- (A) The economics of light jazz broadcasting, once you move outside of the larger metropolitan areas, favor *small* stations that can serve *small* “niche markets” because they have relatively *low* capital and operating costs.

However:

- (B) Thanks to runaway media consolidation, fostered by the Federal Government’s policies of imposing license auctions on even the smallest commercial stations, and then elevating the FCC’s previously applicable media ownership ceilings, there are few small and independent radio stations left.

For

the most part, there are only large stations and smaller ones

controlled by large, out-of-town corporations. The media megacorporations have typically chosen to pursue lower costs,

by exporting standardized programming to their many

satellite stations, over pursuing potentially higher revenues through programming that is tailored to respective local audiences.

-6-

As for Don The Jazz-Starved Lawyer, he is saddened that the potentially profitable “niche market” for light jazz has been written off by the formulaic thinking of the media megacorporations. Unfortunately, under the present regulatory structure, no new, local commercial competitors are likely to come along and try to “build a better mousetrap” by taking a chance on light jazz. Instead, mandatory license auctions and elevated media ownership ceilings have “rigged the competition” for commercial radio licenses -- to favor large companies who already have money over smaller companies who will innovate in an effort to make some.

A few mass media giants presently preside, unchallenged, over virtually all of a commercial radio industry that was once diverse. A commercial LPAM Radio Service is only one step in the right direction -- but it can become an important starting point toward returning innovation and competition to the commercial radio marketplace.

Given this potential, it would be unfortunate if rare opportunities for new stations to *innovate* -- and *generate new competitive pressures* upon woefully under-challenged media giants -- were diverted instead to the

kind of well-established non-profit organizations that have already been given absolutely exclusive control of LPFM.

Is another non-profit local station going to make Clear Channel sweat enough to consider improving its own programming? Probably not. But a hungry, profit-seeking, risk-taking, innovative LPAM station might raise the temperature a degree!

Getting back to under-served radio listeners like Don, who want better *commercial* radio, *in addition to* LPFM's better *non-commercial* radio:

Don has no *philosophical* objections to using the LPAM Radio Service to put another evangelical Christian radio station on the Roanoke Valley airwaves. He is himself a practicing Christian, although a rather unorthodox one, and he attends regularly the Sunday evening Chapel Service at Hollins University.

-7-

However, Don doesn't want to put another evangelical Christian radio station on the Roanoke Valley airwaves if it comes *at the expense of* awarding the same frequency to a light jazz station.

Nor does he want another evangelical Christian station if it comes at the expense of an opportunity to pressure the Clear Channels of the world. Don wants to see "Young Turks" on the dial, putting real heat on the media giants -- so that the giants just might start making their money by *growing their revenues* through *quality programming*, instead of *cutting their costs* through *cut rate entertainment and news*.

After all: There are several evangelical stations on the local radio dial already. Why not give *other* kinds of programming a chance? And other kinds of *competitors*?

The Petitioners' proposed "bonus point" for innovators would do just that.

Severability of "Bonus Point" Proposals

To review, the Petitioners are asking the FCC to adopt 3 proposed approaches to awarding "bonus points" when mutually exclusive LPAM licenses are being considered:

- (1) The Commission should *not* bring to LPAM the current LPFM "bonus point" for an "established record of community service".
- (2) The Commission should instead award a "bonus point" to LPAM applicants who offer to bring *programming content* (or format) *that is new to a service area, but still likely to be financially sustainable.*
- (3) The Commission should also award a "bonus point" for 1 year or more of documented broadcasting experience, including Part 15 AM experience.

We emphasize that we are not presenting these 3 proposals to the Commission as an "all-or-nothing" package. The proposals are, and should be regarded as, severable from each other.

For example, if the Commission decides that a “bonus point” for broadcasting experience is unacceptable, we hope that such a decision will not eliminate consideration of the proposed “bonus point” for innovative programming -- or *vice versa*.

Also:

The Petitioners add that *adopting* either or both of our proposed “bonus points” is less important to us than *avoiding* a carryover of the LPFM “bonus point” for established providers of community service. If the Commission decides not to *reward* innovators, we hope it will at least refrain from *penalizing* them.

Established non-profit organizations already have *an absolute monopoly* over the LPFM branch of Low Power Radio. *PLEASE* open the LPAM branch of Low Power Radio to the many people who were *totally* frozen out of LPFM.

Our Embrace of Conscious Silence on Certain Issues

The FCC may have noticed that our Petition is silent on certain issues that arise when structuring a new LPAM Radio Service. These unaddressed issues include:

Whether to limit LPAM stations to the Extended Band

What limits to set on LPAM station tower heights

How to deal with the special case of TIS stations

Please be aware that the Petitioners’ silence on these matters is intentional. We have deliberately chosen to let individual LPAM supporters address them.

Conclusion

For the reasons we have stated herein, we urge the Commission to adopt the following policies for awarding “bonus points” when considering mutually exclusive Low Power AM license applications:

- (1) Refrain from awarding a “bonus point”, drawn from the Low Power
FM Radio Service, for “an established record of community service”;
- (2) Award a “bonus point” for proposing to provide programming content
(or format) that is new to the local service area, but still likely to be
financially sustainable;

And

- (3) Award a “bonus point” for 1 year or more of documented
broadcasting
experience, including experience with Part 15 AM operations.

Respectfully submitted,

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-11-

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